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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965.

No. 340

IN-SINK-ERATOR MANUFACTURING COMPANY,
Petitioner,

vs.

WASTE KING CORPORATION,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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THE DARNELL-GARNER PRINTING COMPANY, CHICAGO

INDEX.

PAGE

Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit 1-20

1. Statement as to the Matter Involved and as to the Opinions of the Courts Below 1-10
2. Jurisdiction 10-11
3. Questions Presented 11-13
4. Specification of Errors To Be Urged 13-14
5. Reasons Relied Upon for the Granting of the Writ 15-19
6. Conclusion 20

Appendix 21-35

A. Opinion of the Court of Appeals for the Seventh Circuit, Dated May 13, 1965 (145 U. S. P. Q. 441) 21-29

B. Memorandum Decision of the District Court (230 F. Supp. 55) 30-35

C. Colored Drawings Based on PX 4 Showing the Relationship Between the Parts of Petitioner's Commercial Garbage Disposers Charged to Infringe the Respondent's '143 Patent in the California Case and the Parts Charged to Infringe Respondent's '949 Patent in the Action Below 37

CASES.

Angel v. Bullington, 330 U. S. 183, 193 16

Buchanan et al. v. General Motors Corporation, 158 F. 2d 728, 730 ..... 15, 17

Case v. Redfield et al., 5 Fed. Cas. p. 258. (Case No. 2494) (C. C. D. Ind.—1849) 17

Chicot County Drainage District v. Baxter State Bank et al., 308 U. S. 371 (1940), 378 15-16

Clark v. U. S., 13 F. R. D. 342, 344 (D. C. Oregon, 1952) 5

Harper et al. v. Holman et al., 84 Fed. Rep. 222 (C. C. E. D. Penn.—1897), 224 18

In-Sink-Erator Manufacturing Company v. Waste King Corporation (CA 7) (N. D. Ill., E. D.), 230 F. Supp. 55, 57 ..... 2, 16-17

In-Sink-Erator Manufacturing Company v. Waste King Corporation (CA 7), 145 U. S. P. Q. 441 2

McGraw v. Master Craft, 105 Cal. App. 2d 304, 233 P. 2d 185 (1951) 8

United States of America v. E. B. Hougham et al., 81 S. Ct. 13, 17, 18, 364 U. S. 310 (1960) 6

STATUTES.

Title 28 U. S. C. 1254(1), June 25, 1948, c. 646, 62 Stat. 928 10

RULES.

Rule 8(f) of the Rules of Federal Civil Procedure 12, 13, 14, 19

Rule 9(j) of the Rules of the United States District Court for the Southern District of California .. 5, 7, 12, 14

Rule 16 of the Rules of Federal Civil Procedure 6

Rule 38.5(b) of the Revised Rules of the Supreme Court 10

TEXT BOOK.

Cyclopedia of Federal Procedure, Volume 6, 3rd Edition (1951) 19

ARTICLE.

Seminar on Procedures, Article by Hon. A. Sherman Christenson (D. C. Utah), 29 F. R. D. 191, 362, 368 (1961) 5

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STATEMENT AS TO THE MATTER INVOLVED AND AS TO THE OPINIONS OF THE COURTS BELOW.

Petitioner seeks a review of a judgment of the Court of Appeals for the Seventh Circuit which, by a divided court (Circuit Judge Win G. Knoch dissenting) holds, in effect, that a patent owner, owning a block of patents, all relating to different parts of the same commercial device (electric kitchen sink garbage disposers), may sue a competitor successively on each of such patents and thereby exact tribute from his competitor as the result of each successive patent action, in total disregard of fundamental equitable principles which should be applied to bar this type of patent misuse and which should compel the owner of a block of

patents to assert in a single patent action all patents relating to different parts of one and the same commercial device.

The decision of the Court of Appeals is reported at 145 USPQ 441, and a copy thereof is included in the "Appendix" hereto, together with a copy of the decision of the District Court for the Northern District of Illinois, Eastern Division, and which is reported at 230 F. Supp. 55.

The District Court had granted the petitioner injunctive relief barring the respondent from prosecuting successively or one after another actions for patent infringement against the petitioner based upon different patents owned by the respondent relating to closely associated parts of the same electric garbage disposers which had been involved in protracted and expensive patent litigation between the parties in California and Wisconsin.

The earlier California and Wisconsin cases between the parties involved patent No. 2,670,143 ('143) which related to a so-called splash guard used in the upper or throat portion of an electric kitchen garbage disposer for preventing upward splashing of the contents of the garbage disposer during its operation.

The California and Wisconsin cases were settled by an agreement between the parties dated March 29, 1962 (PX* 1, DA** 125), and under which the petitioner paid the respondent the sum of seventy-five thousand dollars ($75,000.00) in consideration for a release (PX 1, Par. 3, DA 125-26) reading as follows:

> "3. Effective upon the filing of the dismissals referred to in Paragraph 2 hereof, each of the parties hereto, for itself, its legal representatives, succesors, and assigns, does hereby remise, release, and forever

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* All references herein to petitioner's exhibits are designated as "PX".

** All references herein to the record (Defendant's Appendix) in the Court of Appeals are designated as "DA".

discharge the other party hereto, its legal representatives, successors, assigns, distributors, dealers, and customers, of all, and from all, and all manner of action and actions, cause and causes of action, claims and demands, whatsoever, in law or in equity, that it ever had, now has, or hereafter may have, arising from any alleged infringement of any of the claims of the Jordan Patent *or arising form any of the facts pleaded in the Wisconsin case or the California case.*"•

Among the "facts pleaded" in the Pre-Trial Conference Order in the California case (PX 21, DA 59-92) were numerous specimens of garbage disposers manufactured by the petitioner (PX 35 to 42, inclusive), numerous drawings of the petitioner (PX 4, 5, 6 and 7, DA 109, 120, 133 and 119), and a brochure of the petitioner (PX 3, DA 97-108), all of which embodied or illustrated a so-called thin wall steel mounting sleeve for mounting the petitioner's garbage disposers in the drain opening of a kitchen sink. In use, the structure now charged by respondent to infringe another one of its patents, No. 2,879,949 ('949), lies in close proximity to and immediately above the so-called splash guard charged to infringe respondent's '143 patent, as is shown by the colored drawing (PX 4) which is reproduced in the "Appendix" to this petition.

Having accepted $75,000.00 from the petitioner and granted what the petitioner believed was a complete release from any further claim of patent infringement against the same electric garbage disposers which had been involved in the California and Wisconsin cases, the respondent waited for a period of approximately five (5) months and, on August 23, 1962 its counsel wrote petitioner a letter (PX 2, DA 131) charging the petitioner with infringement of its '949 patent based upon the same thin steel sleeve mounting unit which was embodied in petitioner's electric garbage

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• All emphasis herein has been supplied.

disposers which had been involved in the earlier California and Wisconsin cases.

Petitioner thereupon brought a declaratory judgment action against the respondent in the Northern District of Illinois, Eastern Division. The First Amended Complaint was in two counts, namely, Count I for declaratory relief as to the charge of infringement of the '949 patent; and Count II as to the defense of the release granted by the respondent to the petitioner under the settlement agreement of March 29, 1962, and for injunctive relief to enjoin the respondent from maintaining any action against the petitioner under the '949 patent based upon any of those parts of the petitioner's electric garbage disposers which were among the

> ". . . facts pleaded in the Wisconsin case or the California case." (PX 1, Par. 3, DA 125-26.)

A separate trial was held on the release defense of Count II of the First Amended Complaint. The District Court sustained the petitioner's position relative to the release defense asserted under Court I and in so doing enjoined the respondent (Judgment Order, Par. 1, DA 325-26):

> ". . . from asserting and maintaining any action or actions for infringement of patent No. 2,879,949, including Claim 7 therof, against the plaintiff, its legal representatives, successors, assigns, distributors, dealers, and customers, as asserted and set forth in the defendant's counterclaim herein, consisting in the manufacture, sale, or use by the plaintiff, its legal representatives, successors, assigns, distributors, dealers, and customers of any garbage disposer or portions thereof by reason of the embodiment in such disposer of any construction embodied in any disposer, specimen, or drawing which the defendant has charged, in the case of *Waste King Corporation, a California corporation* v. *In-Sink-Erator Manufacturing Co., a Wisconsin corporation*, Civil Action No. 291-59-K, in the United States District Court for the Southern District of Cali-

fornia, Central Division, to infringe patent No. 2,670,143".

During the pendency of the California case, and prior to the settlement agreement of March 29, 1962, Pre-Trial Conference Rule 9(j) of the Rules of the United States District Court for the Southern District of California was in force and read, in part, as follows (PX 22, PA 22-23):

> "(j) Pre-Trial Conference Order. At or prior to pre-trial conference, plaintiff shall serve and lodge with the Clerk a proposed Pre-Trial Conference Order, approved as to form and substance by the attorneys for all parties appearing in the case, and in form substantially as follows:
>
> • • • • •
>
> IX. The foregoing admissions having been made by the parties, and the parties having specified the foregoing issues of fact and law remaining to be litigated, this order shall supplement the pleadings and govern the course of the trial of this cause, unless modified to prevent manifest injustice."

In its main brief in the Court of Appeals the respondent took the position that the word "pleaded" in Par. 3 of the settlement agreement between the parties should be limited to the "formal" pleadings in the California case, stating as follows (page 29):

> "We suggest that the word 'pleaded' in Paragraph 3 must, in the absence of any evidence of a contrary intent (and there is none), be interpreted to mean the formal pleadings in the California case, as the term 'pleadings' is understood by judges and lawyers in the legal profession."

After the petitioner had cited in its main brief ample authority to establish that a Pre-Trial Conference Order is a "pleading" (*Clark* v. *U. S.*, 13 F. R. D. 342, 344 (D. C. Oregon, 1952); Seminar on Procedures, 29 F. R. D. 191, 362, 368 (1961); Local Rule 9(j) of the United States Dis-

trict Court for the Southern District of California, Central Division (PX 22, PA 22-23); *United States of America* v. *E. B. Hougham, et al*, 81 S. Ct. 13, 17, 18, 364 U. S. 310 (1960); Rule 16 of the Federal Rules of Civil Procedure), the respondent changed its position and its reply brief reluctantly admitted that a Pre-Trial Conference Order is a "pleading".

In the decision of the majority, the Court of Appeals stated, in part, as follows (page 6):

> "We perceive nothing ambiguous in the provisions of the settlement agreement."

While thus finding nothing ambiguous in the settlement agreement between the parties, the majority of the Court nevertheless emasculated the release provisions of Par. 3 of the settlement agreement by eliminating therefrom those parts of the petitioner's garbage disposers now charged to infringe the '949 patent and which were embodied in the petitioner's alleged infringing garbage disposers recited in the Pre-Trial Conference Order in the California case, on the ground that the Pre-Trial Conference Order in the California case did not charge infringement of the '949 patent (Opinion, p. 6).

In so doing it is submitted that the majority of the Court of Appeals fell into serious error in that the very purpose of the release provision of Par. 3 of the settlement agreement was to preclude the respondent from making any further claim or demand, whatsoever, upon the petitioner as to any of the "facts pleaded" in the Pre-Trial Conference Order in the California case and which included numerous specimens of the petitioner's garbage disposers which embodied the parts now charged to infringe the '949 patent.

Thus, under Par. 1 of the agreement the $75,000.00 paid by the petitioner to the respondent was paid not only for a release

> ". . . from any alleged infringement of any of the claims of said Jordan patent" ('143)

but also from any claims

> ". . . arising from any of the facts pleaded in the Wisconsin Case, or the California Case".

It is obvious, therefore, that in and by the release provisions of the settlement agreement the parties intended that the petitioner should be released not only as to the '143 patent which was directly involved in the California case but also as to any of the other "facts pleaded" in that case including the numerous specimens of petitioner's garbage disposers which embodied the parts now charged to infringe the '949 patent.

As the District Court stated (Decision, DA 323-24):

> "Broadly summarized, these provisions reflect a mutual purpose of the parties to settle all points of controversy between them, and to allow each to continue its business as then carried on, without concern about the other's patents or other claims.
>
> • • • • •
>
> Here this general policy is re-inforced by the specific agreement of the parties to dispose not only of the claims actually asserted in the suits but also of all claims 'arising from any of the facts pleaded', whether asserted as claims for recovery or not.
>
> • • • • •
>
> In the pre-trial conference proceedings in the California suit, Waste King specifically identified the models of In-Sink-Erator disposers that were charged to infringe, and this specification was carried into the judge's pre-trial order, thereby supplementing the pleadings under Rule 9(j) of the Local Rules of the United States District Court for the Southern District of California where the order was entered.
>
> The elements and features which Waste King now charges constitute infringement of the later Jordan

patent were embodied in the In-Sink-Erator disposers charged in the California suit as infringements of the earlier patent. Since the current claim arises from elements of the same device pleaded as infringing in the California suit, it falls within the scope of the agreement barring claims 'arising from any of the facts pleaded' in that suit.

No other reading of the agreement would give any reasonable meaning to that clause. It is common ground between the parties that the agreement is governed by the law of California, which admonishes, 'It is ... the duty of a court to so construe a written instrument as to give force and effect not only to every clause but to every word in it, so that no clause or word may become redundant.' *McGaw* v. *Master Craft*, 105 Cal. App. 2d 304, 233 P. 2d 185, 1951."

In addition, the settlement agreement of March 29, 1962 between the parties provided (Par. 4, DA 126), for a world-wide license to be granted to the petitioner by the respondent herein under the respondent's earlier patent '143, which was involved in the California and Wisconsin cases and under all claims of United States or foreign patents thereafter owned, etc., by the respondent, and which claims defined substantially the same subject matter as any claim of the earlier '143 patent, and also provided (Par. 5, DA 126-27) for a license by the petitioner to the respondent under one of petitioner's patents.

This mutual exchange of licenses thus provided for in the agreement was, however, entirely independent of the release granted by the respondent to the petitioner under Par. 3 of the agreement as is shown by the fact that the last three lines of Par. 3 clearly show that the release was *not* limited to the "Jordan Patent" ('143) but extended to any claim or cause of action arising from any of the "facts pleaded" in the two earlier cases between the parties.

The majority opinion of the Court of Appeals (p. 6) was based upon two erroneous conclusions, namely:

1. That the exhibits in the form of specimens of the petitioner's garbage disposers embodying parts now charged to infringe the '949 patent were "extraneous and irrelevant disclosures" and "did not become facts pleaded" in the California case merely because they were listed in the Pre-Trial Conference Order in that case. This conclusion is entirely erroneous, as may be seen by reference to Sec. V(A) (DA 72, 74) of the Pre-Trial Conference Order in the California case (PX 21, DA 59-92).

Thus, Sec. V of the Pre-Trial Conference Order in the California case (DA 72) bears the following heading:

"V.

"The following issues of fact, and no others, remain to be litigated upon trial:

"(A) Facts Asserted by Plaintiff, But Denied by Defendant."

Sec. V of the Pre-Trial Conference Order includes Par. 7 which reads as follows (DA 74):

"7. Waste disposal devices made, used, or sold by defendant which include any of the constructions illustrated in the sectional view or the left-hand portion of page 2 of Plaintiff's Exhibit 15, Plaintiff's Exhibit 16, Defendant's Exhibits 7A, 7B, 7D, 8A and 8B, since the issue of the Jordan patent and without license from the plaintiff, infringe all of the claims in suit of said Jordan patent."

It will thus be noted that those specimens of petitioner's garbage disposers embodying the parts which the respondent now charges to infringe the '949 patent are listed in Par. 7 of Sec. V of the Pre-Trial Conference Order in that case and that Sec. V specifically recites the issues of

fact to be litigated and the facts asserted by the plaintiff in that case.

It is apparent, therefore, that the Court of Appeals erred in taking the position that the petitioner's garbage disposers now charged to infringe the '949 patent contain "extraneous and irrelevant" disclosures since those parts charged to infringe the '949 patent were embodied in specimens of petitioner's garbage disposers which were specifically listed among the facts pleaded in the Pre-Trial Conference Order in the California case. Moreover, the court had no justification for determining which facts might or might not come under the release provisions of Par. 3 of the settlement agreement between the parties since it found nothing ambiguous in that agreement (Opinion, p. 6) which would require that any of the facts pleaded in the Pre-Trial Conference Order in the California case be excluded from the release provisions of Par. 3 of the settlement agreement.

2. Upon the mistaken conclusion that the release provisions of Par. 3 of the settlement agreement of March 29, 1962 between the parties (PX 1, DA 125) were limited by the license provisions of Pars. 4 and 5 of the agreement which, as shown above, is in error.

JURISDICTION.

The jurisdiction of this court is invoked under Title 28 USC 1254(1), June 25, 1948, c. 646, 62 Stat. 928, and Rule 38.5(b) of the Revised Rules of this court in view of a clear and direct conflict between the decision of the Court of Appeals for the Seventh Circuit and the decisions of other courts including the Court of Appeals for the Second Circuit in a matter of great public importance involving (a) the splitting of a cause of action by the owner of a block of patents into successive patent infringe-

ment actions based upon different patents covering different parts of one and the same commercial device where all parts of the accused device and all of the patents alleged to cover them were well known to the patent owner at the time of the first patent infringement action between the parties in which all of the patents and all accused parts of the device should have been joined; and (b) a matter of great public importance which has never been decided by this court, namely, the application of general principles of equity to prevent an abuse of the patent monopoly and of the legal and economic power of patents which consists in the use of a block of patents covering different parts of one and the same commercial device to harass a competitor by the institution of successive patent infringement actions against different parts of one and the same commercial device.

The decision of the Court of Appeals for the Seventh Circuit is dated May 13, 1965 and the mandate of the Court of Appeals has been stayed to July 12, 1965 to permit filing of this petition for a writ of certiorari which is, therefore, timely.

QUESTIONS PRESENTED.

1. Should a patent owner who owns a block of patents on various parts of one and the same commercial device be permitted to split his cause of action by bringing successive actions against a competitor on different patents where all of the patents and all parts of the device charged to infringe were well known to the patent owner at the time of the first patent infringement action brought by him?

2. Does it constitute an abuse of the patent monopoly and of the legal and economic power of patents for a patent owner, who owns a block of patents relating to different

parts of one and the same commercial device, to bring successive actions for patent infringement against a competitor on each of such patents when all of the patents and all of the alleged infringing parts of the device were well known to the patent owner at the time he brought the first of such actions for patent infringement against the competitor?

3. Does the failure of the respondent to join in the California case not only the '143 patent there involved but also the '949 patent now charged to be infringed, estop the respondent from maintaining the present action, when the respondent was well aware during the pendency of the California case that it owned both of these patents and the constructions charged to infringe these two patents were parts of one and the same commercial device manufactured and sold by the petitioner and which was involved in the California case?

4. Should the expression "facts pleaded", as used in a Pre-Trial Conference Order entered under Rule 9(j) of the Rules of Practice of the Southern District of California, be construed to cover only those facts which relate to the specific patent there in suit, and which was directed to only a minor part of a commercial device embodying many parts, where the entire commercial device was among the "facts pleaded" in the Pre-Trial Conference Order and a release was granted as to any and all claims and causes of action arising from any of such "facts pleaded"?

5. Since a Pre-Trial Conference Order is admittedly a "pleading" (Court of Appeals Decision, p. 6) should Rule 8(f) of the Rules of Federal Civil Procedure be applied to prevent the manifest injustice worked on the petitioner by the majority decision of the Court of Appeals which erroneously held that the exhibits listed in the Pre-Trial Conference Order in the California case were not "facts

pleaded" within the language and meaning of the release provisions of Par. 3 of the settlement agreement of March 29, 1962 between the parties?

Rule 8(f) reads as follows:

"(f) Construction of Pleadings. All pleadings shall be construed to do substantial justice."

SPECIFICATION OF ERRORS TO BE URGED.

That the Court of Appeals for the Seventh Circuit erred:

1. In not holding that a patent owner, who owns a block of patents on various parts of one and the same commercial device should not be permitted to split his cause of action by bringing successive actions against a competitor on different patents where all of the patents and all parts of the device charged to infringe were well known to the patent owner at the time the first patent infringement action was brought by the patent owner;

2. In not holding that it constitutes an abuse of the patent monopoly and of the legal and economic power of patents for a patent owner, who owns a block of patents relating to different parts of one and the same commercial device, to bring successive actions for patent infringement against a competitor on each of such patents when all of the patents and all of the alleged infringing parts of the device were well known to the patent owner at the time he brought the first of such actions for patent infringement against the competitor;

3. In not holding that the failure of the respondent to join in the California case not only the '143 patent there involved but also the '949 patent now charged to be infringed estops the respondent from maintaining the present action when the respondent was well aware during the pendency of the California case that it owned both of these patents and the constructions charged to infringe these

two patents were parts of one and the same commercial device made and sold by the petitioner and which was involved in the California case;

4. Should the expression "facts pleaded" as used in a Pre-Trial Conference Order entered under Rule 9(j) of the Rules of Practice of the Southern District of California, be construed to cover only those facts which relate to the specific patent there in suit, and which was directed to only a minor part of a commercial device embodying many parts, where the entire device was among the "facts pleaded" in the Pre-Trial Conference Order, and a release was granted as to any and all claims and causes of action arising from any of such "facts pleaded";

5. Since a Pre-Trial Conference Order is admittedly a "pleading" (Court of Appeals, Decision, p. 6) should Rule 8(f) of the Rules of Federal Civil Procedure be applied to prevent the manifest injustice worked on the petitioner by the majority decision of the Court of Appeals which erroneously held that the exhibits listed in the Pre-Trial Conference Order in the California case were not "facts pleaded" within the language and meaning of the release provisions of Par. 3 of the settlement agreement of March 29, 1962 between the parties; Rule 8(f) reading as follows:

> "(f) Construction of Pleadings. All pleadings shall be construed to do substantial justice";

6. In not upholding the judgment of the District Court sustaining the release defense asserted by the petitioner under Count II of the First Amended Complaint and granting the petitioner injunctive relief against further actions for patent infringement by the respondent based upon other parts of the same commercial devices which were involved in and which were among the "facts pleaded" in the Pre-Trial Conference Order in the California case.

REASONS RELIED UPON FOR THE GRANTING OF THE WRIT.

1. The majority decision of the Court of Appeals for the Seventh Circuit in the present action involves a question of great public importance in patent litigation and is in direct conflict with decisions of other courts, including the decision of the Court of Appeals for the Second Circuit in the case of *Buchanan et al.* v. *General Motors Corporation,* 158 F. 2d 728, in which the court stated, in part, as follows at page 730:

> "That being so, the usual rule as to the effect of a former judgment in a suit between the same parties on the same cause of action applies here. This is that the judgment is res judicata not only as to all the issues decided but also as to all that could have been. *Snell* v. *J. C. Turner Lumber Co.,* 2 Cir., 285 F. 356. *Plaintiffs may not divide their causes of action and recover by installments. Aurora City* v. *West,* 7 Wall. 82, 74 U. S. 82, 19 L. Ed. 42; *Chicot County Drainage District* v. *Baxter State Bank,* 308 U. S. 371, 60 S. Ct. 317, 84 L. Ed. 329. Two comparatively recent cases of ours are close and controlling. *In re Garment Center Capitol,* 2 Cir., 93 F. 2d 667, 115 A. L. R. 202; *Cleveland* v. *Higgins,* 2 Cir., 148 F. 2d 722.
>
> The cases on which the appellants mainly rely are *Gedney* v. *Gedney,* 160 N. Y. 471, 55 N. E. 1 which is distinguishable on the ground that the cause of action later sued on was not only unknown to the plaintiffs when the first action was brought but remained apparently undiscoverable, and at least undiscovered and unknown to them, until after final judgment in that suit."

The majority decision of the Court of Appeals for the Seventh Circuit is in conflict with decisions of this Court including the case of *Chicot County Drainage District* v. *Baxter State Bank, et al.,* 308 U. S. 371 (1940), in which the late

Chief Justice Hughes, speaking for the Court, stated as follows at page 378:

> "The remaining question is simply whether respondents having failed to raise the question in the proceeding to which they were parties and in which they could have raised it and had it finally determined, were privileged to remain quiet and raise it in a subsequent suit. Such a view is contrary to the well-settled principle that res judicata may be pleaded as a bar, not only as respects matters actually presented to sustain or defeat the right asserted in the earlier proceeding, 'but also as respects any other available matter which might have been presented to that end.' *Grub* v. *Public Utilities Commission*, 281 US 470, 74 L. ed. 972, 50 S. Ct. 374, supra; *Cromwell* v. *Sac County*, 94 U. S. 351, 24 L. ed. 195, supra."

The case of *Chicot County* v. *Baxter, supra*, was cited and followed by this court in the case of *Angel* v. *Bullington*, 330 U. S. 183, in which the late Mr. Justice Frankfurter, speaking for the court, stated as follows at page 193:

> "Litigation is needless if, by fair process, a controversy has once gone through the courts to conclusion. Compare, e. g., *Hazel-Atlas Glass Co.* v. *Hartford Empire Co.*, 322 U. S. 238, 244, 64 S. Ct. 997, 1000, 88 L. Ed. 1250. And it has gone through, if issues that were or could have been dealt with in an earlier litigation are raised anew between the same parties. *Chicot County Drainage Dist.* v. *Baxter Bank*, 308 U. S. 371, 60 S. Ct. 317, 84 L. Ed. 329."

2. The decision of the Court of Appeals for the Seventh Circuit is in direct conflict with decisions of other courts, and with generally accepted principles of equity which preclude a patent owner from splitting his cause of action and harassing a competitor with numerous patent infringement actions based upon the same general subject matter, as the District Court properly held in its decision (230 F. Supp. 55), in which the District Court stated as follows at page 57:

"Under accepted principles, a plaintiff is forbidden to split his cause of action, to maintain two suits on the same wrongful conduct of the defendant. A judgment in a suit asserting a portion of the claim is conclusive on the whole. See Restatement, Judgments Sec. 62 (1942); *F. L. Mendez & Co.* v. *General Motors Corporation*, 161 F. 2d 695 (7 Cir. 1947); *Cleveland* v. *Higgins*, 148 F. 2d 722 (2 Cir. 1945). The principle is fully applicable in patent litigation. See *Hubbell* v. *United States*, 171 U. S. 203, 18 S. Ct. 828, 43 L. Ed. 136 (1898); *Buchanan* v. *General Motors Corp.*, 158 F. 2d 728 (2 Cir., 1947); *Cold Metal Process Co.* v. *United Engineering & Foundry Co.*, 83 F. Supp. 914 (W. D. Pa. 1938)."

In the case of *Case* v. *Redfield, et al.*, 5 Fed Cas. p. 258 (Case No. 2494) (C. C. D. Ind.—1849) the court, in discussing a comparable situation, stated as follows at page 259:

"The second ground of objection in the special demurrer that 'the declaration is double and multifarious,' is not sustainable. The wrong complained of is for an infringement on the improved patent, not for a violation of the original patent or of the improvement upon the original grant, but of the entire right, united in the plaintiff, by the different patents and assignments. The right set up is an entirety, and being united in the same individual is not susceptible of a division. Had he divided his cause of action, claiming damages in one case for the infringement of the original patent, and in another for an infringement of the improvement, the actions could not have been sustained. As well might different actions be brought for trespass, upon a close, on the ground that the land was held under distinct titles. The injury done was to the entire close, and that constitutes the ground of the action. It may be admitted that two defendants can not be united in the same action, where each has infringed distinct patents: for in that case there could be no joint defense. There would be no right common to the defendants, and consequently both would be subjected

to additional costs and delays by the joinder of the two. But where the original patent and the improvement on it are united in the same person, they constitute a whole, an entire right, and must be asserted as such in an action for an infringement."

In *Harper et al.* v. *Holman, et al.*, 84 Fed Rep. 222 (C. C. E. D. Penn.—1897) the court, in discussing the general principle here involved, stated as follows at page 224:

"With the adjudications to which I have referred, and the principle which they plainly enunciate, in mind, I have carefully examined the present bill, in connection with the printed books and papers, which, upon the argument, it was agreed should be taken to constitute a part of the bill itself. This examination had led me to the conclusion that there is no reason for supposing that the infringement charged of the several copyrights in question, as well as of the alleged trade-name or trade-mark, and, in short, every subject-matter proposed for investigation, may not conveniently, and most conveniently, be considered together; and, if each of the alleged infringements had been made the subject of a separate suit, it is, I think, very doubtful, at least, whether it would not have been the duty of the court to decline to entertain such separate suits, without requiring their consolidation. *Case* v. *Redfield*, 4 McLean, 529, Fed. Cas. No. 2494."

In the case of *Hayes* v. *Dayton*, 8 Fed. Rep. 702 (C. C. S. D. N. Y.—1880) the court stated as follows at page 704:

"In new cases the court is governed by those analogies which seem best founded in general convenience, and will best promote the due administration of justice, without multiplying unnecessary litigation on the one hand or drawing suitors into needless and oppressive expenses on the other. Story's Eq. Pl., secs. 531, 639; *Horman Patent Manufacturing Co.* v. *Brooklyn City R. R. Co.*, 15 Blatchf. C. C. R., 444.

We are not without cases on this subject, in suits or patents, in this country. In *Nourse* v. *Allen*, (4 Blatchf. C. C. R., 396), in 1859, before Mr. Justice

Nelson, a bill on four patents was held good on demurrer, where it alleged that the machine sued contained all the improvements in all the patents. The court thought the convenience of both parties, as well as a saving of expense in the litigation, seemed to be consulted in embracing all the patents in one suit on such a case; and that although the defenses as respected the several improvements might be different and unconnected, yet the patents were connected with each other in each infringing machine."

In Volume 6, Cyclopedia of Federal Procedure, 3rd Edition (1951), the following statement of the applicable law appears at page 319:

"Viewing briefly these principles, with regard to discouraging a multiplicity of suits equity looks with favor upon the bringing together into a single litigation of all existing grounds for relief between the parties which can be conveniently heard and adjudicated together without injustice. As a general rule, the court will not compel parties to incur the expense, vexation and delay of several suits, where the transactions constituting the subject of the litigation, or out of which the litigation arises, are so connected by their circumstances as to render it proper and convenient that they should be examined in the same suit, and full relief given by one comprehensive decree. Such a course is obviously to be encouraged, and the opposite and objectionable practice of undue splitting up of causes of action and multiplying the subjects of litigation is for the same reason discouraged."

3. The majority decision of the Court of Appeals for the Seventh Circuit is in conflict with the letter and spirit of Rule 8(f) of the Rules of Federal Civil Procedure which holds that pleadings should be construed to do substantial justice.

CONCLUSION.

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari is well founded in fact and in law and should be granted.

Respectfully submitted,

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July 8, 1965.

APPENDIX.

IN THE UNITED STATES COURT OF APPEALS
For the Seventh Circuit.

SEPTEMBER TERM, 1964—APRIL SESSION, 1965.

No. 14783
IN-SINK-ERATOR MANUFACTURING COMPANY, a Wisconsin Corporation,
Plaintiff-Appellee,
vs.
WASTE KING CORPORATION a California Corporation,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

May 13, 1965

Before KNOCH, CASTLE and SWYGERT, *Circuit Judges.*

CASTLE, *Circuit Judge.* In-Sink-Erator Manufacturing Company, a Wisconsin corporation, plaintiff-appellee, brought suit in the District Court against Waste King Corporation, a California corporation, defendant-appellant, seeking a declaratory judgment, with incidental equitable relief, adjudicating plaintiff's non-liability for charged infringement of Jordan Patent No. 2,879,949.[1] Count I of the complaint alleges the invalidity of the patent and the absence of infringement by the plaintiff. Count II avers the plaintiff is protected from the claims of infringement asserted by the defendant by reason of the release pro-

1 Hereinafter referred to as the '949 patent.

visions of an agreement settling earlier litigation between the parties. These allegations of release and estoppel were put in issue by the defendant. The defendant also filed a counterclaim charging plaintiff with infringement of Claim 7 of the '949 patent.

Upon plaintiff's motion, made pursuant to Rule 42(b) of the Federal Rules of Civil Procedure (28 U.S.C.A.), a separate trial was had of the issues presented by Count II. In a memorandum of decision,[2] embodying its findings of fact and conclusions of law, the District Court found and concluded that the release provisions constitute a bar to the assertion of defendant's claim of infringement. Accordingly, a final judgment order was entered against the defendant.

The plaintiff and defendant are competing manufacturers of electric garbage disposers designed for installation in household kitchen sinks. The record reveals that the current controversy began in August 1962, when counsel for the defendant, Waste King, wrote a letter to the plaintiff charging it with infringement of the '949 patent, and more particularly, of the disclosures of Claim 7 of that patent, relating to a mounting assembly utilizing a grooved thin wall steel sleeve or strainer flange and snap ring construction for installing a garbage disposer unit in a kitchen sink. The defendant, Waste King, it appears, is the exclusive licensee with power to sue for infringement of this patent, originally issued to Hans Jordan on May 31, 1959. An earlier patent issued to Jordan and licensed to Waste King, Jordan Patent No. 2,670,143,[3] was the basis of two earlier suits between these same parties. The first, described as the Wisconsin suit, was filed by the defendant, Waste King, against In-Sink-Erator in the United States District Court for the Eastern District of Wisconsin on

2 Reported at 230 F. Supp. 55.

3 Hereinafter referred to as the '143 patent.

November 28, 1958, Civil Action No. 58-C-338, and charged a breach of contract consisting of a failure to pay royalties under an alleged license agreement between the parties under the '143 patent. The second action, also filed by Waste King against In-Sink-Erator, charged infringement of the '143 patent, upon the theory that the license agreement was terminated. This second suit was filed on May 30, 1959, in the United States District Court for the Southern District of California, Civil Action No. 291-59-K, and is described as the California suit. In it In-Sink-Erator counterclaimed for injunctive relief and an accounting for damages for unfair competition. In both the Wisconsin and the California suits In-Sink-Erator's alleged use of a rubber splash guard in the disposer opening, a feature allegedly protected by the '143 patent, was the principal issue.

The Wisconsin and California suits were disposed of without adjudication when on March 29, 1962, the parties entered into an agreement of compromise and settlement. The agreement recites the pendency of the Wisconsin and California cases, Waste King's desire to obtain a license under a designated patent owned by In-Sink-Erator, and in other pertinent parts is as follows:

> WHEREAS, WASTE KING is the exclusive licensee with the right to grant sublicenses under United States Letters Patent No. 2,670,143, issued on February 23, 1954, which, together with all reissues and extensions thereof, are hereinafter referred to collectively as the 'JORDAN PATENT'; and
>
> • • • • •
>
> WHEREAS, it is the desire of the parties hereto to settle and terminate the WISCONSIN CASE and the CALIFORNIA CASE; and
>
> WHEREAS, it is the desire of IN-SINK-ERATOR to obtain a paid-up, non-exclusive, non-cancellable license under said JORDAN PATENT and a release of all possible

liability arising out of the facts pleaded and involved in the WISCONSIN CASE and the CALIFORNIA CASE; and

* * * * *

NOW, THEREFORE, in consideration of the premises and the mutual covenants set forth hereinafter, the parties have agreed as follows:

1. IN-SINK-ERATOR shall, prior to April 1, 1962, pay to WASTE KING the sum of Seventy-Five Thousand Dollars ($75,000.00), in full payment of any and all profits, and/or damages, and/or royalties and/or costs, and/or other liability of any kind whatsoever which may accrue, or which may have accrued, or which may have become due and payable to WASTE KING, or its predecessor or predecessors in interest, up to and including the date hereof, from IN-SINK-ERATOR arising from any alleged breach of contract, or arising from any alleged infringement of any of the claims of said JORDAN PATENT, or arising from any of the facts pleaded in the WISCONSIN CASE, or the CALIFORNIA CASE.

2. Each of the parties hereto hereby agree that their respective counsel, forthwith after the payment referred to in Paragraph 1 hereof, shall execute and file stipulations of dismissal in the WISCONSIN CASE and CALIFORNIA CASE, respectively, in the forms attached hereto as 'Exhibit A' and 'Exhibit B'.

3. Effective upon the filing of the dismissals referred to in Paragraph 2 hereof, each of the parties hereto, for itself, its legal representatives, successors, and assigns, does hereby remise, release, and forever discharge the other party hereto, its legal representatives, successors, assigns, distributors, dealers, and customers, of all, and from all, and all manner of action and actions, cause and causes of action, claims and demands, whatsoever, in law or in equity, that it ever had, now has, or hereafter may have, arising from any alleged infringement of any of the claims of the JORDAN PATENT or arising from any of the facts pleaded in the WISCONSIN CASE or the CALIFORNIA CASE.

> 4. WASTE KING for itself, and joined by, for, and with the consent and approval of, Given Machinery Company, a signatory hereto, hereby grants to IN-SINK-ERATOR, effective upon the filing of the dismissals referred to in Paragraph 2 hereof, and continuing until the expiration of the last expiring patent coming under the provisions of this Paragraph 4 hereof, a paid-up, non-cancellable, non-exclusive, right and license throughout the world to make, use, and sell under said JORDAN PATENT and under all claims of all other United States and foreign Letters Patent, now or hereafter owned by WASTE KING and/or said Given Machinery Company or as to which either WASTE KING or said Given Machinery Company now has or acquires the right to grant licenses or sublicenses, which claims define substantially the same subject matter as any claim or claims of said JORDAN PATENT (but excluding any claims of any such other Letters Patent, which include anything not disclosed in said JORDAN PATENT).
>
> • • • • •

The record discloses that a pre-trial conference order was entered in the California case. That order sets forth (a) the facts admitted and requiring no proof; (b) facts which, although not admitted, are not to be contested by evidence to the contrary; (c) the issues of fact and the issues of law remaining to be litigated upon trial; and (d) the exhibits each party proposes to offer in evidence at the trial. The exhibits so listed by In-Sink-Erator included certain physical specimens of its garbage disposers, or portions thereof; drawings thereof; and a brochure describing In-Sink-Erator's disposers, which it is conceded embody or illustrate constructions now charged by Waste King to infringe Claim 7 of the '949 Jordan patent.

The settlement agreement recites that it shall be deemed to have been executed at Los Angeles, California. In-Sink-Erator does not dispute Waste King's contention that the

construction and application of the agreement is to be governed by California law.

The District Court characterized the agreement as reflecting "a mutual purpose of the parties to settle all points of controversy between them, and to allow each to continue its business as then carried on, without concern about the other's patents or other claims" and concluded that since the current claim of infringement of the '949 patent arises from elements of the devices pleaded as infringing the '143 patent in the California suit, the current claim of infringement of the '949 patent falls within the scope of the provision of the agreement barring claims "arising from any of the facts pleaded" in the California suit.

The appellant, Waste King, contends, among other things, that it is plain from the agreement itself that the release is not a general release but is limited to the classes of things enumerated and that Waste King's current claim of infringement of the '949 patent by In-Sink-Erator is not a claim "arising from any of the facts pleaded in" the California case. The appellee, In-Sink-Erator contends, in substance, that the pre-trial conference order entered in the California case is a "pleading" and that the District Court did not err in concluding that the current claim of infringement of Claim 7 of the '949 patent arises "from facts pleaded" in the California case because physical specimens, drawings, and a descriptive and illustrative brochure listed in the pre-trial conference order as exhibits proposed to be introduced upon trial of the case disclose embodiments of the structural features and elements now charged to infringe the '949 patent.

Appellant concedes that a pre-trial conference order constitutes a pleading insofar as it establishes, enlarges, or limits the issues of fact or of law in the case. Cf.

United States v. Hougham, 364 U.S. 310, 315-316; *Clark* v. *United States*, D.C. Ore., 13 F.R.D. 342, 344; Local Rule 9(j) of the United States District Court for the Southern District of California. But appellant points out that none of the issues of fact or of law involved in the California case concerned or related to the '949 patent or to any claim or demand based thereon, and urges that the mere incidental and unrelated disclosure made by a proposed exhibit listed in a pre-trial conference order does not constitute a "fact pleaded" in the cause. We agree with the appellant that the extraneous and irrelevant disclosures here made by the proposed exhibits did not become "facts pleaded" in the action merely because the proposed exhibits were listed in the pre-trial conference order.

Examination of the settlement agreement reveals that it is not a general release or cross-licensing of patents owned or controlled by the parties. It enumerates the class of claims released and the scope of the licenses granted. And, the provisions of paragraph 3 of the agreement extending the release beyond claims arising from the alleged infringement of the '143 patent to include claims "arising from any of the facts pleaded" in the Wisconsin or California cases was not without subject matter contemporaneously in controversy between the parties, *i.e.*, the claim in the Wisconsin suit for royalties allegedly due under a license agreement concerning the '143 patent and the unfair competition counterclaim in the California suit.

We perceive nothing ambiguous in the provisions of the settlement agreement. And, in our opinion, the broad characterization of the agreement expressed by the District Court does not comport with the governing principle of California law set forth in *Shriver* v. *Kuchel*, 113 Cal. App. 2d 421, 248 Pac. 2d 35:

> "Compromise agreements, however, 'regulate and settle only such matters and differences as appear clearly

> to be comprehended in them by the intention of the parties and the necessary consequences thereof, and do not extend to matters which the parties never intended to include therein, although existing at the time.' "

The judgment order of the District Court is reversed and the cause is remanded to the District Court for trial or other appropriate disposition of Count I of plaintiff's first amended complaint and the defendant's counterclaim.

REVERSED AND REMANDED

KNOCH, *Circuit Judge* (dissenting). With regret, I find myself compelled to dissent. The Wisconsin and California cases between the parties here, based initially on the '143 patent, were filed on or about November 26, 1958, and March 30, 1959, respectively. The '143 patent related to a waste disposal device embodying a splash guard which (with supporting means for the grinding mechanism) is mounted on and supported by a sleeve adapted to be supported in a sink drain opening.

The '949 patent issued March 31, 1959, about a day or so after the California suit was filed. It relates to a garbage disposal device embodying means including a grooved thin wall steel sleeve and snap-ring construction for supporting the grinding mechanism in a sink drain opening.

The settlement agreement was entered into March 29, 1962. Physical specimens and drawings of portions of the accused devices were among the "facts pleaded" in the prior litigation settled by that agreement of March 29, 1962. The very same elements and features of the current models now accused in connection with the '949 patent were embodied in the models which were accused in connection with '143. Defendant was surely well aware of its own patent claims in '949. That patent is mentioned

in a memorandum dated October 19, 1959, and the application for that patent is mentioned in an Amendment of Royalty agreement dated April 18, 1957. Both documents are listed as exhibits which the defendant proposed to offer at the trial of the California case.

I would agree with the District Judge that "the current claim arises from elements of the same device pleaded as infringing in the California suit," and "falls within the scope of the agreement barring claims 'arising from any of the facts pleaded' in that suit." I would affirm the judgment of the District Judge, adopting his Memorandum of Decision as this Court's opinion.

APPENDIX.

In-Sink-Erator Manufacturing Company,
a Wisconsin corporation, Plaintiff,

v.

Waste King Corporation,
a California corporation, Defendant.

Civ. A. No. 62 C 1990.

United States District Court
N. D. Illinois, E. D.

May 28, 1964.

JULIUS J. HOFFMAN, District Judge.

The controlling question presented in this action concerns the interpretation and application of an agreement of compromise and settlement which disposed of prior litigation between these parties.

In this suit the plaintiff seeks a declaratory judgment, with incidental equitable relief, adjudicating its non-liability for charged infringement of Letters Patent No. 2,879,949. Relief is sought in two counts. Count I of the complaint alleges the invalidity of the patent and the absence of infringement by the plaintiff. Count II avers that the plaintiff is protected from the claims of infringement asserted by the defendant by reason of the release provisions of the compromise agreement entered into between the parties. Upon the plaintiff's motion, a separate trial was held on the claim presented in Count II, setting up the release, since the disposition of that claim might render

unnecessary an extended trial of the issues of validity and infringement tendered by Count I.

From the evidence introduced at that trial it appears that the plaintiff and defendant are competing manufacturers of electric garbage disposers designed for installation in household kitchen sinks. The plaintiff, In-Sink-Erator Manufacturing Company, is a Wisconsin corporation with its principal place of business in the city of Racine, Wisconsin. The defendant, Waste King Corporation, is incorporated under the laws of California with its principal place of business in Los Angeles. The complaint alleges the existence of a genuine controversy concerning the defendant's extra-judicial assertions that the plaintiff's products involve infringement of the defendant's patent. Jurisdiction is based on the Declaratory Judgment Act, 28 U. S. C. § 2201, upon diversity of citizenship, 28 U. S. C. § 1332, and upon the ground that the claims of the complaint arise under the patent laws of the United States, 28 U. S. C. §§ 1331, 1338. See *Edelmann & Co.* v. *Triple-A Specialty Co.*, 88 F. 2d 852 (7 Cir. 1937).

The current controversy began on August 23, 1962, when counsel for the defendant, Waste King, wrote a letter to the plaintiff charging infringement of patent No. 2,879,949, and more particularly, of the disclosures of Claim 7 of that patent, relating to a mounting assembly utilizing a grooved thin wall steel sleeve or strainer flange and snap ring construction for installing a garbage disposer unit in the kitchen sink. The defendant, Waste King, it appears, is the exclusive licensee with power to sue for infringement of this patent, originally issued to Hans Jordan on May 31, 1959. An earlier patent issued to Jordan and licensed to this defendant, No. 2,670,143, was the basis of two earlier suits between these same parties. The first, described as the Wisconsin suit, was filed by this defendant against this

plaintiff in the United States District Court for the Eastern District of Wisconsin on November 26, 1958, Civil Action No. 58-C-338, and charged a breach of contract consisting in a failure to pay royalties under an alleged license agreement between the parties under this earlier Jordan patent. The second action, also filed by this defendant against the plaintiff, charged simple infringement of the same patent, upon the theory that the license agreement was terminated. This second suit was filed on May 30, 1959, in the United States District Court forthe Southern District of California, Civil Action No. 291-59-K, and is described as the California suit. In both actions the present plaintiff interposed counterclaims. In both, the principal issue was the plaintiff's alleged use of a rubber splash guard in the disposer opening, allegedly protected by this earlier patent.

These two proceedings were disposed of without adjudication when on March 29, 1962, the parties entered into an agreement of compromise and settlement. The instrument recites in a preamble the pendency of these Wisconsin and California suits and the desire of the parties to settle and terminate them. This preamble also states that In-Sink-Erator is the owner of Patent No. 2,814,449, known as the Wieczorek patent, and that Waste King is the exclusive licensee of the earlier Jordan patent, and declares that the parties desire mutual paid-up, non-exclusive, non-cancellable licenses under these patents. Finally, the preamble states that it is the desire of In-Sink-Erator to obtain "a release of all of all possible liability arising out of the facts pleaded and involved in the Wisconsin case and the California case."

In effectuation of these mutual desires, the compromise agreement contains four operative paragraphs. The first provides for the payment of $75,000 by In-Sink-Erator to Waste King "in full payment of any * * * liability of any

kind whatsoever which may accrue, or which may have accrued * * * up to and including the date hereof, from * * * any alleged breach of contract, from any alleged infringement of any of the claims of said Jordan patent, or arising from any of the facts pleaded in the Wisconsin case or the California case." Paragraph 3, upon which the plaintiff now relies, provides that each party releases the other "of all, and from all, and all manner of action and actions, cause and causes of action, claims and demands, whatsoever, in law or in equity, that it ever had, now has, or hereafter may have, arising from any alleged infringement of any of the claims of the Jordan patent or arising from any of the facts pleaded in the Wisconsin case or the California case."

The succeeding two paragraphs contain mutual grants between the parties of non-cancellable, paid-up licenses under Waste King's Jordan patent and In-Sink-Erator's Wieczorek patent and under any other patents the parties may have or acquire which "define substantially the same subject matter as any claim or claims" of the named patents.

[1-4] Broadly summarized, these provisions reflect a mutual purpose of the parties to settle all points of controversy between them, and to allow each to continue its business as then carried on, without concern about the other's patents or other claims. It is the settled policy of the law to encourage voluntary compromise of civil disputes, and a compromise has many of the attributes of a final judgment. See *Baker* v. *Philbin,* 97 Cal. App. 2d 393, 218 P. 2d 119 (1950); *Shriver* v. *Kuchel,* 113 Cal. App. 2d 421, 248 P. 2d 35 (1952). Under accepted principles, a plaintiff is forbidden to split his cause of action, to maintain two suits on the same wrongful conduct of the defendant. A judgment in a suit asserting a portion of the claim is conclusive

on the whole. See Restatement, Judgments § 62 (1942); *F. L. Mendez & Co.* v. *General Motors Corporation,* 161 F. 2d 695 (7 Cir. 1947); *Cleveland* v. *Higgins,* 148 F. 2d 722 (2 Cir. 1945). The principle is fully applicable in patent litigation. See *Hubbell* v. *United States,* 171 U. S. 203, 18 S. Ct. 828, 43 L. Ed. 136 (1898); *Buchanan* v. *General Motors Corp.,* 158 F. 2d 728 (2 Cir. 1947); *Cold Metal Process Co.* v. *United Engineering & Foundry Co.,* 83 F. Supp. 914 (W. D. Pa. 1938).

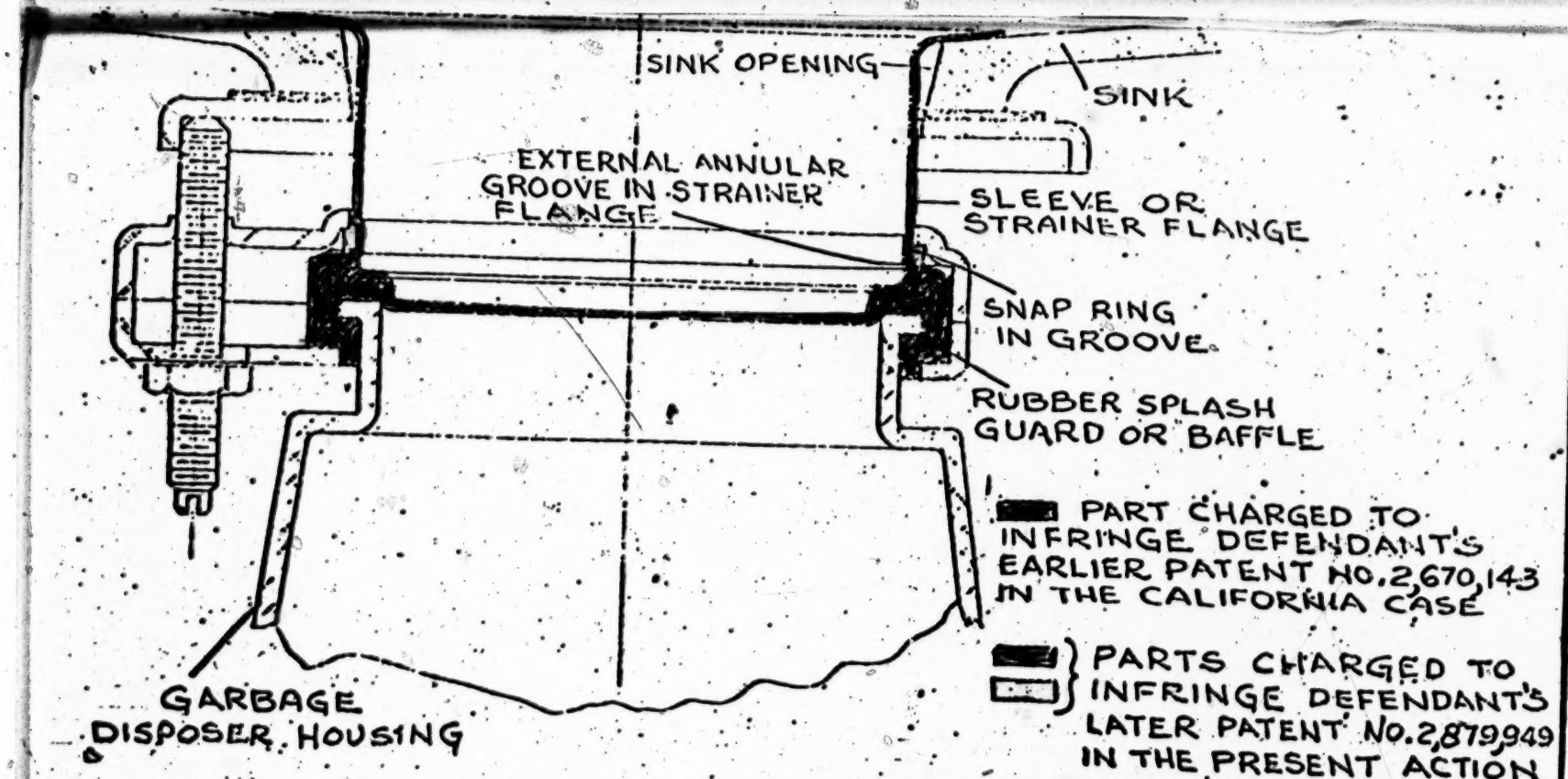
[5] Here this general policy is reinforced by the specific agreement of the parties to dispose not only of the claims actually asserted in the suits but also of all claims "arising from any of the facts pleaded," whether asserted as claims for recovery or not. The complaint in the California case charged that In-Sink-Erator "has infringed and is still infringing * * * and has derived unlawful benefits and profits from such infringement, which the plaintiff would otherwise have received," thus charging the manufacture of competing articles or products. The answer and counterclaim in that suit makes repeated descriptive references to the "accused waste disposer units manufactured and sold by" In-Sink-Erator. In the pre-trial conference proceedings in the California suit, Waste King specifically identified the models of In-Sink-Erator disposers that were charged to infringe, and this specification was carried into the judge's pre-trial order, thereby supplementing the pleadings under Rule 9(j) of the local Rules of the United States District Court for the Southern District of California where the order was entered. The elements and features which Waste King now charges constitute infringement of the later Jordan patent were embodied in the In-Sink-Erator disposers charged in the California suit as infringements of the earlier patent. Since the current claim arises from elements of the same device pleaded as infringing in the California suit, it falls within the scope of the agreement

barring claims "arising from any of the facts pleaded" in that suit.

[6] No other reading of the agreement would give any reasonable meaning to that clause. It is common ground between the parties that the agreement is governed by the law of California, which admonishes, "it is * * * the duty of a court to so construe a written instrument as to give force and effect not only to every clause but to every word in it, so that no clause or word may become redundant * * *." *McGaw* v. *Master Craft,* 105 Cal. App. 2d 304, 233 P. 2d 185 (1951).

[7] Although no offense to the parol evidence rule is involved in the consideration of documents which, like the court records here, are specifically incorporated by reference into the agreement of the parties, it is conceded that no evidence of prior or contemporaneous understandings or negotiations may be received to alter or vary the terms of the written agreement. See *In re Gaines' Estate,* 15 Cal. 2d 255, 100 P. 2d 1055 (1940). No question is raised, therefore, concerning the exclusion of the defendant's proffered evidence within this rule.

Since the release constitutes a bar to the assertion of the defendant's claim of infringement, it is unnecessary to proceed to trial on the issues presented by Count I of the complaint or by the counterclaim. A final judgment order is accordingly entered herewith. In accordance with the provisions of Rule 52 of the Federal Rules of Civil Procedure, this memorandum embodies the court's findings of fact and conclusions of law.


SINK OPENING
SINK
EXTERNAL ANNULAR GROOVE IN STRAINER FLANGE
SLEEVE OR STRAINER FLANGE
SNAP RING IN GROOVE
RUBBER SPLASH GUARD OR BAFFLE
PART CHARGED TO INFRINGE DEFENDANT'S EARLIER PATENT NO. 2,670,143 IN THE CALIFORNIA CASE
PARTS CHARGED TO INFRINGE DEFENDANT'S LATER PATENT NO. 2,879,949 IN THE PRESENT ACTION
GARBAGE DISPOSER HOUSING

TOLERENCES ON DIMENSIONS UNLESS OTHERWISE SPECIFIED
ANGULAR ± 30' FRACTIONAL ± .010 DECIMAL ± .005

SUPERSEDES NO.

SUPERSEDED BY NO.

SEE CHANGE NOTICE FOR MORE DETAILS

NO.	DATE	NAME	NO. OF NOTICE
8			
7			
6			
5			
4			
3			
2			
1			

IN-SINK-ERATOR MANUFACTURING CO.
RACINE, WISCONSIN

MOUNTING ASS'Y

SCALE FULL	MATERIAL ✓	
DATE JULY 5, 1956	DRAWN BY J. T.	DRAWING NO. 77-5110
APP'D. [illegible]	CHK'D.	

DEFENDANT'S APPENDIX 109
Plaintiff's Exhibit I-2.
37 Plaintiff's Trial Exhibit 4